APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 11, 2013 which found that the appellant is not eligible for assistance as a Child in the Home of a Relative (CIHR). The ministry found that the appellant currently resides with her parents and is, therefore, no longer eligible for assistance pursuant to Section 6 of the *Employment and Assistance Regulation* (EAR).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 1 and Section 6 (repealed)

Child in the Home of a Relative Program Transition Regulation

APPEAL #

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration included the Request for Reconsideration- Reasons dated November 29, 2013.

At the hearing, the appellant provided additional documents as follows:

1) Letter dated March 4, 2010 from the Ministry of Children and Family Development (MCFD) to the appellant's representative as "caregiver" and stating in part that the MCFD is making changes to the CIHR [Child in the Home of a Relative] program but "as a current CIHR client, I want to assure you that there will be no change to your status. You will continue to receive assistance as long as your file remains open and you and the child or youth in your care meet the criteria for assistance under the existing CIHR program. The Ministry of Housing and Social Development (MHSD) will continue to deliver the program under existing regulations and policy"; and,
2) Excerpts from the *Family Law Act* SBC 2011, c. 25 and the *Child, Family and Community Service Act* RSBC 1996, c.46.

The ministry did not object to the admissibility of any of the documents. The panel reviewed the documents and admitted the letter, pursuant to Section 22(4) of the *Employment and Assistance Act*, as providing further detail relating to the transitional period of the CIHR program, and being in support of information that was before the ministry on reconsideration. The excerpts from legislation were considered by the panel to be part of the appellant's argument.

In the Request for Reconsideration, the representative for the appellant wrote that the appellant is her granddaughter, who has had a difficult childhood. Almost 8 years ago, the appellant was at serious risk and need of protection and she and her husband, as the paternal grandparents, stepped in to provide a safe place for their granddaughter and support for their son, the child's father. At that time, the ministry did not fund the grandparents as foster parents for the care they were providing the appellant as they were also supporting the child's parent. There were no other safe options for the child at the time outside of becoming a ward of the court. The only option of support was through the CIHR program which was much less funding than that available for foster care.

The appellant's representative wrote that the potential risk to the appellant was still very high and they continually had to work at ensuring her protection from the risk of abuse, with no legal authority to do so. Adoption was the only choice to ensure safety from risk of abuse from the child's birth parents who continued to struggle with addiction and relational issues that made it impossible for them to provide adequate care for their child. The appellant's representative wrote that they had to consult lawyers, a mediator, and a private social worker in order to plan and prepare for the step of adoption and to cover the legal aspects of the adoption. The appellant's representative wrote that as legal parents, they now have the authority and the ability to make decisions based on the child's best interests and safety. Upon reporting the adoption of the child to the ministry in the fall, an inquiry was made to the manager for the region about how to handle the file. The assistance cheques were stopped in October 2013 and, in November, they were informed that the file was closed.

In her Notice of Appeal, the appellant's representative wrote that she disagrees with the ministry's reconsideration decision because she believes the ministry did not complete a wholesome, purposeful interpretation of the legislation involved in the CIHR program. The representative wrote that the most important consideration is the best interests of the child, the appellant, and they took

the step of adoption because it was the only way to continue to safeguard their grandchild and to ensure her safety and security.

At the hearing, the appellant's representative stated that the circumstances of the appellant and with this program are unique as the MCFD does not run it anymore, and it is hard to figure out where their family fits. She has come across cases where grandparents on the CIHR program become guardians or are given custody of the child and it has not caused them to be disqualified for the assistance. The appellant's representative stated that they consider themselves grandfathered into the program and it is currently the only benefit available to support them in caring for the child. She pointed to the letter from MCFD, which states that there will be no change in their status under the existing program. She was surprised that the ministry upheld the original decision on reconsideration, given the information and legislation that was provided. The ministry has looked at the situation through the small lense of the definition of a "parent" because the appellant was adopted and have said she is no longer eligible. The ministry did not do a full review given the history and circumstances of the child, and she asks that the panel look at the big picture, including the policy and all of the legislation. The overarching principle in the legislation is the best interests of the child, as shown in Section 37 of the *Family Law Act* and Section 3 of the *Child, Family and Community Service Act*.

The appellant's representative stated that, according to the definition provided, she has been the "parent" of the child since shortly after the child came into their home several years ago. She and her husband and the appellant's father were given tripartite custody of the child and they were considered the child's guardians as early as 2007. Since the child's father was also living with them for a period of time, they could not be considered foster parents. However, the child's father, the representative's step son, soon left the residence. The CIHR benefits are only a small portion of what they would receive if they were considered "foster parents," like many other grandparents. No one explained the financial ramifications of the adoption to them, which occurred in August 2013. The representative stated that she currently has full-time employment but her husband is unable to work and they have taken on the responsibility of continuing to care for the appellant "for life". The representative stated that they may be eligible for certain tax exemptions for child care.

The ministry relied on the reconsideration decision which included evidence that the appellant has been in receipt of income assistance as a CIHR since December 2008. On September 19, 2013, the appellant's representative advised the ministry that she had adopted the appellant. At the hearing, the ministry explained that the policy regarding the CIHR program that was previously applied did not contain the same restrictions that are currently set out in the legislation. Relatives could become guardians of the child, for example, and continue to be eligible under the CIHR program. The ministry clarified that the current and relevant legislation referred to in the reconsideration decision and considered by the ministry in making its decision included the definition of "parent" in Section 1 of the EAR, and not the provisions of the *Adoption Act* RSBC 1996, c. 5.

APPEAL #

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for assistance as a Child in the Home of a Relative (CIHR) pursuant to Section 6 of the *Employment and Assistance Regulation* (EAR) as the appellant currently resides with her parents, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

Section 6 of the *Employment and Assistance Regulation* (EAR), which has been repealed, provided:

Child in the home of a relative

6. (1) In this section,
"child" does not include a person with disabilities;
"relative" in relation to a child, does not include the child's parent.

(2) Subject to subsection (2.1), a child is eligible for income assistance under section 11 of Schedule A if
(a) a child resides with his or her relative,
(b) the child's parent placed the child with the relative, and
(c) the child's parent does not reside with the relative.

(2.1) A child is not eligible for income assistance under subsection (2) if
(a) the child ceases to meet the conditions set out in subsection (2),
(b) the relative with whom the child resides has entered into an agreement under section 8 of the Child, Family and Community Service Act in relation to the child,
(c) the relative with whom the child resides or the parent of the child fails
(i) to provide accurate and complete information to the minister,
(ii) to provide all of the authorizations requested by the minister under section 4.4 or 34.1 within the time, if any, specified by the minister,
(iii) to attend in person at the ministry office when required to do so by the minister under section 34.1 (2) (c), or
(iv) to submit the form required by the minister under section 34.1 (2) (a), within the time specified by the minister,
(d) the minister determines, based on a review of the application of the child provided on or after December 1, 2007 and information obtained under the authorization appended to the application, that there is a level of risk to the child in the home that indicates the home where the child resides is not an appropriate place for the child, or
(e) the minister has conducted an audit under section 34.1 and determines, based on information provided under the audit, that there is a level of risk to the child in the home that indicates the home where the child resides is not an appropriate place for the child.

(3) If a child is eligible for income assistance under subsection (2), the minister may pay the income assistance to the relative for the child.

Section 1 of the EAR provides a definition of "parent" as follows:

"parent" , in relation to a dependent child, includes the following other than for the purposes of sections 20 [*categories of persons who must assign maintenance rights*] and 65 [*burial or cremation supplements*] of this regulation and section 6 [*people receiving room and board*] of Schedule A of this regulation:

(a) a guardian of the person of the child, other than
  (i) a director under the Child, Family and Community Service Act, or
  (ii) an administrator or director under the Adoption Act;
(b) a person legally entitled to custody of a child, other than an official referred to in paragraph (a) (i) or (ii);
(c) if the child is a dependent child of a parenting dependent child, a person who is the parent of the parenting dependent child.

The *Child in the Home of a Relative Program Transition Regulation* provides:

Child in home of relative transition

1. The provisions referring to a child in the home of a relative, or otherwise applying in relation to such a child or the relative with whom such a child resides, of the *Employment and Assistance Regulation*, B.C. Reg. 263/2002, and of the *Employment and Assistance for Persons with Disabilities Regulation*, B.C. Reg. 265/2002, as those regulations read on March 31, 2010, continue to apply in relation to
  (a) a child in the home of a relative who was eligible to receive income assistance under section 6 of the *Employment and Assistance Regulation*, on March 31, 2010,
  (b) a child whose application under section 6 of the *Employment and Assistance Regulation* was received on or before March 31, 2010 and approved on or after that date, and
  (c) the family unit of a relative with whom a child referred to in paragraph (a) or (b) was residing on March 31, 2010,

  until the date the child ceases to be eligible for income assistance under section 6 of the *Employment and Assistance Regulation* as it read on March 31, 2010.

Additional audit powers

2 (1) In this section, "section 34.1" means section 34.1 of the *Employment and Assistance Regulation*, B.C. Reg. 263/2002, as it read immediately before its repeal on March 31, 2010.
  (2) For the purposes of the application of section 34.1 (1) as it applies under section 1 of this regulation, on or after the date this section comes into force,
    (a) the minister may also conduct a review of all records obtained under the *Child, Family and Community Service Act*, the *Family and Child Service Act*, S.B.C. 1980, c. 11, and the current and former *Adoption Act*, pertaining to the persons referred to in section 34.1 (1) (a) (i) and (ii), and
    (b) the written authorizations under section 34.1 (2) (b) must permit the minister to use and disclose information about a person referred to in section 34.1 (2) (b) (i) or (ii) for the purpose of conducting a review under paragraph (a) of this subsection.

Ministry's position

The ministry's position is that the *Child in the Home of a Relative Program Transition Regulation* provides that the provisions of the repealed Section 6 of the EAR continue to apply as long as the child remains eligible for CIHR. The ministry argued that when an individual is found ineligible, she must re-apply and, as the CIHR program is no longer a provision in the EAA and EAR, a re-application may not be considered. The ministry argued that under the repealed Section 6 of the EAR a child is eligible for CIHR assistance if the child resides with a "relative," which is defined as not including the child's parent. The ministry argued that the applicable legislation is that currently in force and when the appellant's representative legally adopted the appellant she became the appellant's "parent" pursuant to Section 1 of the EAR, which includes a person legally entitled to

custody of a child. The ministry argued that even without this prescribed definition, it is reasonable to conclude that a legal adopted guardian of a child is the child's parent. The ministry argued that since the appellant currently resides with her legal adopted parents, she is not eligible for assistance as a CIHR.

Appellant's position

The appellant's position is that the reconsideration decision is in conflict with the overarching principle of the best interests of the child as set out in the *Family Law Act* and the *Child, Family and Community Service Act,* as it leaves the appellant without support. The appellant's representative argued that she and her husband are grandfathered into the CIHR program, as confirmed by the March 4, 2010 letter from MCFD, and it is currently the only benefit available to support them in caring for the child. The representative argued that the ministry has looked at the situation through the small lense of the definition of a "parent" because the appellant was adopted and the ministry should have done a full review given the history and circumstances of the child. The representative argued that since there was no definition of "parent" in the EAR as of March 31, 2010, the applicable definition is the ordinary meaning of the term and grandparents are not considered parents in a legal sense unless some legislative provision states that they are parents. The appellant's representative argued that, according to the definition added to the EAR, she and her husband have been the "parents" of the child since shortly after the child came into their home several years ago, since they were entitled to custody of the child, and the appellant was nevertheless considered by the ministry to be eligible for CIHR assistance until the adoption in 2013.

Panel decision

Section 6 of the EAR was repealed in March of 2010 and the *Child in the Home of a Relative Program Transition Regulation (Transition Regulation)* was enacted at that time. The *Transition Regulation* stipulates that the provisions referring to a child in the home of a relative, *or otherwise applying in relation to such a child or the relative with whom such a child resides*, **as the EAR read on March 31, 2010**, continue to apply until the date the child ceases to be eligible for income assistance under Section 6 of the EAR as it read on March 31, 2010. Section 6(2) of the EAR as it read on March 31, 2010 states that a child is eligible for income assistance as long as three criteria are met, including that the child resides with her "relative." Section 6(1) of the EAR states that a "relative" in relation to a child does not include the child's parent. The appellant has been in receipt of assistance as a CIHR since 2008 as she has resided with her paternal grandparents as her "relatives"; however, in or about August 2013, the grandparents adopted the child and the ministry found that the status of the grandparents thereby changed. The ministry argued that the grandparents became the child's "parents" so that the child no longer resides with her "relatives" and no longer meets the first criteria for eligibility in Section 6(2) of the EAR.

The ministry's position is that when the grandparents adopted the child in or about August 2013, the grandparents became persons legally entitled to custody of the child and thereby became the child's "parents," pursuant to the definition prescribed in Section 1 of the EAR which is currently in effect. However, the *Transition Regulation* specifically states that the provisions of the EAR **as the regulation read on March 31, 2010** apply *in relation to such a child or the relative with whom such a child resides* and, at that time, the EAR contained no definition of "parent." The definition of parent was not added to Section 1 of the EAR until October 1, 2012. The panel finds that the ministry applied the definition of "parent" set out in the EAR as of October 1, 2012, which is not the applicable enactment according to the provisions of the *Transition Regulation*, and the applicable enactment is, rather, the EAR as it read on March 31, 2010.

However, the ministry also argued that even without the prescribed definition for "parent", it is reasonable to conclude that a 'legal adopted guardian of a child' is the child's "parent." The appellant's representative argued, on the other hand, that since there was no definition of parent in the EAR on March 31, 2010, that the ordinary meaning of the term should be relied upon and grandparents are not considered "parents" in a legal sense, unless some legislative provision states that they are parents. The appellant's representative wrote in the Request for Reconsideration that she and her husband had to consult lawyers, a mediator, and a private social worker in order to plan and prepare for the step of adoption and to cover the legal aspects of the adoption. Although the appellant's representative stated at the hearing that no one explained the full ramifications of the adoption to her, she wrote in the Request for Reconsideration that "as legal parents," they now have the authority and the ability to make decisions based on the child's best interests and safety.

The evidence demonstrates that the appellant's grandparents, after securing legal advice, considered themselves as "legal parents" of the appellant at the time of the adoption in August 2013. The panel takes notice of the provisions of the *Adoption Act*, RSBC 1996, c. 5, particularly Section 37(1)(b) which relates to the effects of an adoption order and provides that "the adoptive parent becomes the parent of the child." The panel finds that the ministry reasonably determined that the grandparents became the appellant's "parents" pursuant to the effect of the adoption order. The panel finds further that the ministry reasonably determined that, at the time of the adoption, the appellant no longer resided with her "relatives" and no longer met all of the eligibility criteria of Section 6(2), becoming ineligible for income assistance as a CIHR, pursuant to Section 6(2.1) of the EAR.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which concluded that the appellant currently resides with her "parents" and is, therefore, no longer eligible for assistance pursuant to Section 6 of the EAR, was reasonably supported by the evidence and the panel confirms the decision.